IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

WP(C).No. 32336 of 2007(Y)

PETITIONERS:

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1. A.C.BHANUNNI @ VALLUVANATTUKARA VALLABHA VALIYA RAJA, S/O. A.C.KUNCHIKAVUTHAMPURATTI, AGED 82 YEARS, TRUSTEE, SREE THIRUMANDHAMKUNNU BHAGAVATHY DEVASWOM, POST BOX NO.5, ANGADIPURAM, MALAPPURAM DISTRICT.

2. N.A.KRISHNA KUMAR, S/O. V.KUNHUKUTTAN, AGED 51 YEARS, NRB QUARTERS, ANGADIPURAM, MALAPPURAM DISTRICT.

BY ADVS. SRI.K.RAMAKUMAR
SRI.T.RAMPRASAD UNNI

RESPONDENTS:

THE COMMISSIONER FOR HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS DEPARTMENT, KOZHIKODE.

BY GOVERNMENT PLEADER SRI.BEJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.GIRI, J.

W.P.(C).No.32336 of 2005 Y

Dated this the 1st day of November, 2007.

JUDGMENT

The first petitioner is a Managing trustee of Sree Thirumandhamkunnu Bhagavathi Devaswom. Due to his advancing years, he sought for permission to appoint a personal assistant. This was sanctioned under Ext.P1. Accordingly, the second petitioner was appointed as the personal assistant to the first petitioner, who is the appointing authority, in terms of Section 48 of the Madras Hindu Religious and Charitable Institutions Act, 1951 {for short '**the Act**'}. The powers and duties of the second petitioner is laid down by the first petitioner in Ext.P2. While so, Ext.P3 was issued by the first respondent Commissioner stating that on enquiry by a Special team, it is revealed that the second petitioner has received Rs.1,40,000/- unauthorisedly and that the continued service of the second petitioner may not be beneficial to the Devaswom.

There is, therefore, a recommendation to dispense with his services and to recover the amount, which has allegedly been received by the second petitioner unauthorisedly. Petitioners challenge Ext.P3.

2. The right to appoint a staff in a religious institution, where the office of service is not hereditary, is vested with the trustee, in terms of Section 48 of the Act. It is accordingly that the second petitioner was appointed by the first petitioner. In my view, Ext.P3 need only be taken as a notice issued by the Commissioner to the first petitioner bringing to his notice certain alleged irregularities. The first petitioner submitted his objections thereto and after hearing him, the first respondent took a final decision as to whether the permission earlier granted for appointment of a personal assistant to the first petitioner needs to be modified in any manner. Of course, it is open to the first petitioner in the meantime to take appropriate

remedial measures. Ext.P3 cannot be considered as an order dispensing with the service of the second petitioner, inasmuch as that the appointing authority of the second petitioner is the first petitioner. The power of the Trustee, under Section 49 of the Act could be exercised by the Commissioner as an appellate authority insofar as the trustee is concerned. Therefore, a decision will have to be taken by the first petitioner.

Subject to this clarification, this writ petition is disposed of.

Sd/-
(V.GIRI)
JUDGE

sk/

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P.S. To Judge